

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 339

Introduced by Senator Alpert

(Principal coauthor: Assembly Member Corbett)

(Coauthor: Senator Kuehl)

February 19, 2003

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 339, as amended, Alpert. Private child support collectors.

Existing law governs the collection of child support by local child support agencies.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would limit the fees that may be charged by a private child support collector, require that entity to make specified disclosures to the child support obligee, authorize the obligee to cancel any contract entered into with that entity, specify the terms of any payment agreement reached with the obligor, and regulate advertising by the private child support collector.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9 (commencing with Section 5610) is
2 added to Part 5 of Division 9 of the Family Code, to read:
3

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. This chapter shall be known and may be cited as the Private Child Support Collection Act.

5611. For purposes of this chapter, a “private child support collector” means any individual, corporation, nonprofit organization, private attorney, or other nongovernmental entity that engages in the business of collecting child support.

5612. A private child support collector is subject to this chapter if he or she does all of the following:

(a) Solicits business from prospective child support obligee clients who are residents of this state.

(b) Enters into a contract with a child support obligee in this state to provide services to collect child support payments from the obligor for that obligee.

(c) Contacts a child support obligor who resides in, or is employed in, this state for the purpose of collecting child support payments.

5613. (a) A private child support collector may collect a fee of no more than 15 percent on any payment collected on behalf of the obligee. ~~The~~ *However, the* fee assessed on any lump-sum payment that satisfies the obligation in full shall be no more than 20 percent.

(b) In any case in which monthly payments have been received for six months, a private child support collector may not collect a fee of more than 10 percent on any future payment. However, if the obligor fails to make a payment, thereby causing the private child support collector to incur additional time, effort, or expense to locate the obligor and reestablish payments, that fee may increase to 15 percent for each of the next three consecutive months. If the obligor makes timely payments for three consecutive months after missing a payment, the private child support collector may not collect a fee of more than 10 percent on any future payment.

(c) A private child support collector may not collect any fee for child support collections attributable to the action of the obligee or any public or governmental entity. The burden lies with the private child support collector to document that his or her actions led to the collection of any child support payment.

5614. A private child support collector shall disclose to the obligee *via secure Internet or telephone access, or, at the obligee's request, by mail*, no less than monthly, all of the following:

(a) The source or form of each payment received from the obligor.

(b) The amount and percentage of each payment that is deducted by the private child support collector as a fee.

(c) The balance remaining to be paid on the total child support obligation.

(d) The estimated date, at the current rate of payment, including any fee payable to the private child support collector, by which the balance will be paid in full.

5615. A private child support collector may not require that payments collected by or from any other private or governmental entity be directed to the private collector, rather than the obligee, *unless the obligee has completed and submitted a written request to the private or governmental entity for a change of address for the disbursement of support payments. The written request shall include an acknowledgement by the obligee of the obligee's right to rescind the request or to change the address at any time.*

5616. If a private child support collector locates an obligor and reaches a payment agreement with an obligor, the obligee has the right to review the agreement. The payment agreement provided to the obligee shall describe in detail the length of time it will take to pay off the balance. The obligee may refuse to accept the agreement and cancel the contract under the provisions of Section 5617.

5617. The obligee may cancel the contract under the following circumstances:

(a) At any time during the first 60 days. Compensation to the private child support collector shall equal the actual costs of collecting child support payments, but may not exceed ~~=====~~ *five hundred dollars (\$500).*

(b) After reviewing the payment plan negotiated between the private child support collector and the obligor. Compensation to the private child support collector shall equal the actual costs of collecting child support payments, but may not exceed ~~=====~~ *one thousand dollars (\$1,000).*

1 (c) After any 90-day period during which collections have been
2 one-third or less than the amount specified for that period in the
3 payment agreement.

4 5618. Each obligee has the right to review all files and
5 documents, both paper and electronic, in the possession of the
6 private child support collector regarding that obligee's case ~~at any~~
7 ~~time~~. *The private child support collector may charge a fee to cover*
8 *the actual and reasonable costs of duplicating the case files.*
9 *Information about the obligor contained in the case files shall be*
10 *kept confidential, to the extent required by law.*

11 5619. A private child support collector shall include the
12 following disclosures in the contract provided to potential clients:

13 (a) That the Department of Child Support Services and local
14 child support agencies provide free services to those seeking child
15 support enforcement.

16 (b) All fees, including ~~and~~ any application or administrative
17 fees.

18 (c) That the assignment of a child support obligation to a
19 nongovernmental entity may result in the debt being dischargeable
20 if the child support obligor files for bankruptcy. The disclosure set
21 forth in this subdivision is not required if both of the following
22 conditions are met:

23 (1) The assignment taken by a debt collector of the child
24 support obligation is an assignment for collection, as defined in
25 *Harrison v. Adams* (1942), 20 Cal.2d 646, in which the support
26 obligee retains a direct beneficial interest in the support obligation,
27 maintains control over the beneficial interest, and will receive a
28 present benefit from any payment on the debt.

29 (2) The debt collector satisfies all other requirements of
30 bankruptcy law that the debt collector knows or with reasonable
31 diligence should have known would render the debt
32 nondischargeable in bankruptcy pursuant to Section 523(a)(5) of
33 Title 11 of the United States Code.

34 5620. (a) Each private child support collector shall make the
35 following disclosure in any advertisement, commercial, or other
36 solicitation: "(Name of debt collector) is a private for-profit debt
37 collector and not a governmental entity. (Name of debt collector)
38 charges a fee for its services."

39 (b) The disclosure required by subdivision (a) shall be printed
40 in every written advertisement and solicitation as follows:

1 (1) In a type size that is at least equal to one-quarter of the type
2 size used to advertise the collection service. In no event shall the
3 disclosure be printed in less than 8-point type.

4 (2) In the same style and color of type used to advertise the
5 collection service.

6 (3) Immediately above, below, or beside the advertised fee
7 without any intervening words, pictures, marks, or symbols.

8 (4) In the same language as the advertisement.

9 (c) This section shall apply to an advertisement, commercial,
10 or solicitation in English or any other language.

11 *(d) If a private child support collector seeks to advertise using*
12 *a particular advertising outlet and any of the requirements set forth*
13 *in paragraphs (1) to (3), inclusive, of subdivision (b) conflict with*
14 *the advertising specifications of that outlet so that compliance with*
15 *those requirements would prevent the private child support*
16 *collector from being permitted to advertise using that advertising*
17 *outlet, the private child support collector is not required to comply*
18 *with the requirements of paragraphs (1) to (3), inclusive, of*
19 *subdivision (b) that are in conflict with those advertising*
20 *specifications.*

